IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8396 of 1995

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL N DANGAR - Petitioner(s)
Versus
PORBANDAR NAGAR PALIKA - Respondent(s)

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Appearance :
MR NV SOLANKI for Petitioner No(s).: 1.
MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2005

ORAL JUDGMENT

1. The petitioner herein has challenged the award dated 16.11.1994 passed by the Labour Court, Junagadh in Reference LCJ No.1053/90 in so far as the Labour Court has refused to grant back wages to the petitioner.

2. The short facts of the case are that the petitioner was employed by the respodnent Nagarpalika on the post of Sanitation Sub-Inspector. His services came to be terminated with effect from 6.9.1987 in pursuance of which the respondent raised a dispute which was referred to the Labour Court, Junagadh, for adjudication. The Labour Court, after hearing the parties ordered reinstatement without back wages. Therefore in this petition the petitioner claimed back wages.

3. Learned counsel for the petitioner submitted that when reinstatement is awarded, the Labour Court ought to have awarded full back wages. He submitted that the Labour Court has not exercised the discretion vested in it for awarding back wages. According to the petitioner, from 6.9.1987 to 26.1.1991 the petitioner was out of job and therefore he is entitled to full back wages. Learned counsel further submitted that the Labour Court grossly erred in observing that the petitioner should have procured work and earned during the period in question.

4. Learned counsel for the respondent submitted that the Labour Court has rightly rejected the claim of the petitioner. When the petitioner has not worked during the period in question there was no reason for grant of any back wages even on the principle of “No work no pay”.

5. It is an undisputed fact that the petitioner was appointed for a fixed period and the appointment was for a period of less than one year. On the facts of the case I am of the opinion that the finding of Labour Court regarding breach of provisions of

section 25F is not proper. In para 5 of the award, the Labour Court has noted the contention of the respondent Nagarpalika wherein it is pointed out the period for which the petitioner was appointed. It is also required to be noted that the reinstatement was granted only on the ground that subsequently some juniors were retained and therefore there was breach of provisions of sections 25G and H of the Industrial Disputes Act. As regards the question of back wages is concerned, the Labour Court was of the opinion that since the petitioner was appointed for fixed period, and he must have worked in some other place, back wages were not required to be awarded. I am of the view that merely because reinstatement was granted, it is not a matter of right to get back wages. During the period in question there were brakes in service and the petitioner had been given short term appointments. I am of the view that when work is not done, remuneration is not to be paid and back wages cannot be granted mechanically. Moreover, as the breach is of the provisions of Sections 25G and H there is no justification for granting backwages.

6. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

"10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle "no work no 'ay" as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

> 12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In view of the above, I am of the opinion that the Labour Court has not committed any error in not awarding back wages. This petition is, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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